

Message Text

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TAGS: PFOR, OCON, UNIDO, CU

SUBJ: ELECTION OF CUBA TO BUREAU OF UNIDO PERMANENT COMMITTEE;

LEGAL OPINION HOLDS THAT CUBA IS MEMBER OF GROUP D

REF: VIENNA 2674

1. IN RESPONSE TO REQUEST FROM GROUP B MADE DIRECTLY TO SECRETARIAT, UNIDO LEGAL LIAISON OFFICER KLOEPZIG (FRG) APPEARED BEFORE GROUP B AFTERNOON APRIL 9 TO GIVE OPINION ON LEGAL ASPECTS OF ELECTION OF CUBA TO BUREAU OF UNIDO PERMANENT COMMITTEE AS REPRESENTATIVE OF GROUP C (LATIN AMERICA).

2. KLOEPZIG'S OPINION WAS ADDRESSED TO TWO LEVELS OF QUESTION, CONSTITUTIONAL AND PROCEDURAL. ON CONSITITUTIONAL LEVEL HE HELD THAT UNGA, IN ELECTING CUBA TO MEMBERSHIP IN UNIDO INDUSTRIAL DEVELOPMENT BOARD (IDB), HAD DECIDED TO PLACE CUBA IN SECTION D (SOCIALIST COUNTRIES) OF ANNEX II TO RULES OF PROCEDURE FOR IDB. THEREFORE, CUBA IS A MEMBER OF GROUP D FOR THE DURATION OF ITS PRESENT TERM ON IDB, AND

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CANNOT IN PRINCIPLE BE PROPOSED AS REPRESENTATIVE

FROM GROUP C ON THE BUREAU OF UNIDO PC OR IDB. TO HOLD THAT CUBA WAS A MEMBER OF GROUP D ONLY FOR THAT INSTANT WHEN GA ELECTIONS TO IDB TOOK PLACE--REVERTING IMMEDIATELY THEREAFTER TO GROUP C--WAS HE BELIVED CONTRARY TO THE INTENT OF THE GD, SINCE IT WOULD LEAVE ONLY FOUR GROUP D SEATS ON IDB, WHILE GROUP C, WITH SEVEN SEATS ALREADY FILLED, WOULD BE OVERREPRESENTED. IN KLOEPZIG'S VIEW, GA DID NOT INTEND THAT RESULT, BUT, RATHER, CLEARLY INTENDED TO PLACE CUBA IN GROUP D FOR PURPOSES OF MEMBERSHIP ON THE IDB (KLOEPSIG PRIVATELY INFORMED USDEL THAT HE HAD CLEARED THIS OPINION WITH UN LEGAL ADVISER SUY, WHO CONCURRED).

3. ON PROCEDURAL LEVEL, KLOEPZIG HELD THAT GROUPS D AND C COULD AGREE THAT A MEMBER OF GROUP D SHOULD REPRESENT GROUP C ON THE BUREAU OF THE PC OR IDB. THIS WOULD, HOWEVER, IN HIS OPINION, REQUIRE SUSPENSION OF RULE 19 OF THE IDB RULES OF PROCEDURE. HE FELT THAT, IN EFFECT, RULE 19 HAD BEEN TACITLY SUSPENDED BY THE VOTE ELECTING CUBA IN THE PC PLENARY OF APRIL 7. US REP ASKED KLOEPZIG WHETHER HE HELD THAT GROUP C COULD HAVE NOMINATED A REPRESENTATIVE FROM ANOTHER GROUP PROVIDED IT WAS MADE CLEAR THAT THAT REPRESENTATIVE WAS FROM ANOTHER GROUP. KLOEPZIG STATED THAT THIS WAS, IN HIS OPINION, CORRECT; USREP POINTED OUT THAT GROUP C HAD NOMINATED CUBA AS A MEMBER OF GROUP C, AND THAT ARGENTINA, AS CHAIRMAN OF GROUP C, HAD SPECIFICALLY INSISTED ON THIS POINT.

4. FRG DEL POINTED OUT THAT SUSPENSION OF RULE 19 WOULD HAVE REQUIRED APPLICATION OF RULES 63 AND 79 OF IDB RULES OF PROCEDURE, WHICH PRESCRIBE THAT ANNOUNCEMENT BE MADE OF A REQUEST TO SUSPEND A RULE AND THAT 24 HOURS NOTICE BE GIVEN BEFORE VOTING IF REQUESTED BY ANY DELEGATION. IN THE LIGHT OF PERSISTENT GROUP B REQUESTS FOR LEGAL OPINION PRECEDING VOTE, FRG HELD THAT RULE 79 HAD BEEN VIOLATED. USREP, NOTING THAT HIS OWN VIEWS ON THE OPINIONS OFFERED BY KLOEPZIG DID NOT NECESSARILY LIMITED OFFICIAL USE

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REPRESENT THOSE OF THE USG, POINTED OUT THAT EVEN IF THAT OPINION WERE VALID, THE PROCEDURE ACTUALLY FOLLOWED WAS FLAWED IN THAT CUBA HAD BEEN REPRESENTED AS A MEMBER OF GROUP C FOR PURPOSES OF ELECTION TO BUREAU. SEVERAL INDIVIDUAL DELEGATIONS REJECTED KLOEPZIG'S VIEW THAT THE ELECTION ITSELF REPRESENTED A TACIT AGREEMENT TO SUSPEND RULE 19.

5. ASKED IF THE ELECTION OF CUBA TO PC-VII BUREAU COULD BE "CORRECTED," KLOEPZIG DESCRIBED THIS AS "THE CRUCIAL QUESTION;" IN HIS OPINION THE ELECTION WAS NOT VOID PER SE, BUT MEMBERS COULD CHALLENGE THE TERMS UNDER WHICH THE ELECTION OF CUBA TOOK PLACE. IN RESPONSE TO QUESTION BY FRG DEL, KLOEPZIG AGREED THAT "ELECTION WAS NOT VOID, BUT WAS VOIDABLE" SWEDISH DEL EXPRESSED VIEW, STRONGLY SUPPORTED BY MAJORITY OF GROUP B, THAT HE WAS PERFECTLY PREPARED TO ACCEPT CUBA AS MEMBER OF BUREAU OF PC, PROVIDED THAT, IN LIGHT OF LEGAL OPINION GIVEN BY KLOEPZIG, CUBA WERE CLEARLY IDENTIFIED AS MEMBER OF GROUP D ON THE BUREAU. UK DEL BELIEVED AN IMPORTANT POINT OF PRINCIPLE WAS INVOLVED IN THE MANNER IN WHICH CUBA WAS ELECTED, AND REQUESTED THAT KLOEPZIG PRESENT HIS VIEWS TO GROUP B IN WRITTEN FORM FOR TRANSMITTAL TO CAPITALS. KLOEPZIG PROMISED TO PRESENT WRITTEN OPINION BY AFTERNOON OF MONDAY, APRIL 12.

6. COMMENT: HAVING HEARD LEGAL LIAISON OFFICER'S OPINION, A NUMBER OF GROUP B DELS, LED BY FRG, EXPRESSED VIEW THAT ELECTION OF CUBA SHOULD IMMEDIATELY BE CHALLENGED. UK DEL BELIEVED THAT EFFORT SHOULD BE MADE WITH PC CHAIRMAN BEHIND THE SCENES TO CORRECT RECORD TO SHOW THAT CUBA HAD BEEN ELECTED AS MEMBER GROUP D, BUT DID NOT RECEIVE SUPPORT FOR THIS LINE OF ACTION. GROUP B APPEARS NOW TO HAVE BEFORE IT TWO OPTIONS; TO CHALLENGE ELECTION OF CUBA IN PLENARY SESSION OF PC EARLY WEEK OF APRIL 12 (SOME DELEGATIONS MIGHT PRESS FOR THIS) OR, TO RAISE FORMAL MOTION, ON APPEARANCE OF REPORT OF RAPPORTEUR, THAT REPORT DOES NOT ACCURATELY LIMITED OFFICIAL USE

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REFLECT THE LEGAL POSITION, I.E., THAT BUREAU INCLUDES TWO MEMBERS OF GROUP D, ONE REPRESENTING GROUP C. GROUP B WILL PROBABLY DECIDE ON COURSE OF ACTION DURING MEETING OF AFTERNOON APRIL 12, AFTER RECEIPT OF WRITTEN LEGAL OPINION. USDEL DOES NOT INTEND TO PRESS EITHER OF THE SPECIFIC COURSES OF ACTION NOTED ABOVE BUT WILL ATTEMPT SHAPE EVENTS SO THAT RECORD CLEARLY IDENTIFIES CUBA AS MEMBER GROUP D AND REFLECTS EXCEPTIONAL CIRCUMSTANCES OF ITS ELECTION AS REPRESENTATIVE OF GROUP C. SINCE TREATMENT OF THIS QUESTION WILL HAVE BEARING ON ELECTION OF BUREAU OF IDB-X SCHEDULED FOR APRIL 20, USDEL WOULD APPRECIATE ANY GUIDANCE DEPT THINKS NECESSARY ASAP. WE ASSUME THAT GROUP C (PARTICULARLY BARZIL AND ARGENTINA) WOULD HAVE

POLITICAL DIFFICULTY WITH A SITUATION IN WHICH A
GROUP D COUNTRY WAS PUT FORWARD BY GROUP C TO
REPRESENT ITS INTERESTS ON THE BUREAU. STIBRAVY

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